

REMARKS/ARGUMENTS

In the specification, paragraph [0183] has been amended to delete lead line 81.

Claim 1 has been amended to change “electronics” to “electronic”, and to change “encryption” to “encrypted form”. Claim 2 has been amended to change “the owner” to “an owner”. Claim 13 has been amended to add “a” immediately before “television signal decoder” and to delete “(set top box)”. Claim 15 has been amended to change “electronics” to “electronic”, and to change “to said secure” to “at said secure”. Claim 16 has been amended to delete “(FAT_HEADER)” and “(DIST_HEADER)”.

Referring to paragraph 2 of the Office Action, a number of the applicants are no longer with their assignee, and additional time is required, and requested, to enable their assignee to obtain signatures to a new oath or declaration.

The objection to the drawings is believed obviated by the replacement sheet for Figure 23 wherein lead line 81 has been eliminated as unnecessary.

The objections to the claims in paragraphs 4 – 7 are believed to be obviated by the amendments to claims 1, 13, and 15f as suggested by the Examiner.

The rejection of claims 1 -14, and 16 and dependent claims 3 – 12 and 13 under 35 U.S.C. § 112 in paragraphs 8 – 14 of the Office Action are believed obviated by the amendments to claims 1 b, 2 , 13, 16 b, and 16 c

The rejection of Claims 1 -4, 6, 8, 11 – 13, 15, 17 and 19 under 35 U.S.C. § 102(e) as being anticipated by Spies *et al.* U.S. Patent No. 6,055,314, is respectfully traversed. The examiner admits that Spies *et al.* does not explicitly teach element (c) of Claim 1 or 15, i.e., downloading personal license information to the card means, but appears to contend that it is inherently shown by the reference by referring to the material at column 6, lines 18 - 34. As the Examiner knows, a rejection under 35 U.S.C. § 102(e) requires that all elements of the claim appear in the single cited reference. The only exception is where the undisclosed material is inherently described. Here, however, the Examiner is not referring to inherent disclosure but is in fact erroneously characterizing what Spies *et al.* refer to as a cryptographic program key as a license. But a cryptographic program key is not a license as Applicants use the word “license.” Simply, downloading of licensing information is not described by Spies *et al.*, nor is it inherent in the reference, nor can anything else in Spies *et al.* be properly combined with the citation to teach or in any way suggest downloading of licensing information.

The word “license” has a well recognized meaning having nothing to do with cryptographic keys (even if the license itself were to be encoded; it would then be an encoded license, not a cryptographic key). See, for example, Webster’s Ninth New Collegiate Dictionary, which defines “license” as “permission to act”, whereas it has as the relevant definition of “key”: “the set of instructions governing the encipherment and decipherment of messages.” Applicants have multiple reference to licenses that establish irrefutably that the license itself is not a cryptographic key. See, for example, the following statements in the indicated paragraphs:

[0029] "Owners may also release content not transformed/modified, where other types of usage license may be defined."

[0034] "After selecting the desired license (for example an unlimited license) he initiates purchase transaction. The system processes this transaction and returns the requested license to be stored on the License Management Device. The user can now listen the song. In this case, since he purchased an unlimited license, he can listen to the song as many times as he wants."

[0109] "Each time a song that was previously licensed is utilized, the KeyCard remembers exactly what song was listened to and uploads this data each time the user's account is accessed using the KeyCard"

[0118] "Users are able to register online via their PCs for a KeyCard, which can be sent to them by mail. Registrants on the network are able to both add and update licenses onto their KeyCard at home by using an inexpensive card reader/writer that will connect to a PC port."

[0125] "Users will be able to purchase new licenses from the armrest into their KeyCard and secondly, to access special selections of content only available to KeyCard holders."

Respectfully, none of these licenses are cryptographic keys. In contrast, the word "license" is nowhere to be found in Spies *et al.*

Case law establishes that to serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence, but "[s]uch evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). Here, those skilled in the art would recognize that a license is not a cryptographic key.

The rejection of Claims 5 and 7 under 35 U.S.C. § 103(a) as being unpatentable over Spies *et al.* is respectfully traversed. Without conceding anything about the reasons for this rejection, the rejection is fundamentally flawed for the same reason given above with respect to the rejection under 35 U.S.C. § 102(e) in that Spies *et al.* do not teach anything about a license and the cited reason for rejection has nothing to do with any license.

The rejection of Claims 10 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Spies *et al.* is respectfully traversed. Without conceding anything about the reasons for this rejection, the rejection is fundamentally flawed for the same reason given above with respect to the rejection under 35 U.S.C. § 102(e) in that Spies *et al.* do not teach anything about a license and the cited reason for rejection has nothing to do with any license.

The rejection of Claim 16 under 35 U.S.C. § 103(a) as being unpatentable over Spies *et al.* as applied to claim 15 in view of Hurtado *et al.* (U.S. Patent No. 6,418,421) is respectfully traversed. Without conceding anything about the reasons for this rejection, the rejection is fundamentally flawed for the same reason given above with respect to the rejection under 35

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U.S.C. § 102(e) in that Spies *et al.* do not teach anything about a license and the cited reason for rejection has nothing to do with any license.

The rejection of Claims 9 and 18 under 35 U.S.C. § 103(a) as being unpatentable over Spies *et al.* as applied to claim 15 in view of Yu (*Network Electronic Video Distribution*) is respectfully traversed. Without conceding anything about the reasons for this rejection, the rejection is fundamentally flawed for the same reason given above with respect to the rejection under 35 U.S.C. § 102(e) in that Spies *et al.* do not teach anything about a license and the cited reason for rejection has nothing to do with any license. Moreover, the Examiner's contention of obviousness uses a non-sequitur. Yu may teach the desirability of preventing unnecessary traffic but that's just a goal. Yu doesn't teach how to do it in the context of the present invention.

The rejection of Claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Spies *et al.* as applied to claim 15 in view of Amazon.com (<http://web.archive.org/web/199910130917817/http://amazon.com>) is respectfully traversed. Without conceding anything about the reasons for this rejection, the rejection is fundamentally flawed for the same reason given above with respect to the rejection under 35 U.S.C. § 102(e) in that Spies *et al.* do not teach anything about a license and the cited reason for rejection has nothing to do with any license.

In view of the foregoing, Applicants believe the application is in condition for allowance and respectfully solicit a Notice of Allowance.

The Commissioner is hereby authorized to charge payment of any fees required associated with this communication or credit any overpayment to Deposit Account No. 50-0337. If an extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. 50-0337. A duplicate copy of this paper is enclosed.

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Respectfully submitted,

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